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60683 7590 04/30/2012 HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO, CA 94303				
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/665,442  
Filing Date: September 19, 2000  
Appellant(s): BROWN, STEPHEN J.

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John Ignatowski  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on March 19, 2012 appealing from the Office action mailed August 19, 2011.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/237,194; 11/451,546; 11/473,960; 11/511,793; 11/509,337; 09/810,334; 10/741,168; 11/528,737; 11/509,425; 11/524,117; 11/610,156; 11/614,302; 11/748,148; 10/279,749 and 11/226,404.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 47-49, 51-62, and 77-110.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 47, 55-57, 77, 84, 91, 98, 105 and 107-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujimoto.

(A) As per claim 47, Fujimoto teaches a system for monitoring a physiological condition of a individual using a computer network (Fujimoto: Abstract), comprising:

(a) a central processing unit (A) having access to one or more databases and (B) configured to

(i) read a template program from a database

(ii) generate a first program by modifying the template program in response to input

data by modifying the template program in response to input data received via the communication network and (iv) transmit the first program via the communication network (Fujimoto: Figure 4 and Col. 2, Ln. 67-Col. 3, Ln. 25 and Col. 6, Ln. 22-30)

(ii) further programming code configured to assign the first program to the individual (Fujimoto: Col. 8, Ln. 8-39);

(b) a remote programming apparatus remotely located from and in signal communication with the central processing unit via the communication network, wherein the remote processing apparatus is configured to (i) receive the first program from the communication network and (ii) connect to a measuring device to collect measurement data according to a collect contained in the first program and (iv) to transmit the measurement data to the central processing unit (report) via the communication network according to a transmit command contained in the first program (Figure 1; Col. 2, Ln. 32-55; Col. 4, Ln. 12-68; Col. 8, Ln. 8-39; Col. 9, Ln. 10-Col. 10, Ln. 10)

(c) a computer remotely located from and in signal communication with the central processing unit via the communication network, wherein the computer is configured to (i) transmit the input data to the central processing unit via the communication network (iii) receive measurement data from the central processing unit via the communication network and (iv) present a report generated based on the measurement data (Fujimoto: Figure 1 and Col. 2, Ln. 32-44; Col. 4, Ln. 50-60).

(B) As per claim 55, in Fujimoto the first program comprises one or more queries and one or more response choices for the individual (Fujimoto: Col. 4, Ln. 25-58).

(C) As per claim 56, in Fujimoto the remote processing comprises a human interface configured to receive one or more responses from the individual to the queries to be communicated to the central processing unit. (Fujimoto: Col. 4, Ln. 14-58 and Col. 8, Ln. 13-39)

(D) As per claim 57, in Fujimoto the remote processing apparatus is sufficiently compact to be hand-held and carried by the individual (Fujimoto: Figure 2 and Col. 2, Ln. 56-68).

(E) As per claims 77, 84, 91, 98, 105, and 107-110 these claim are substantially similar to Claims 47 and 55-57 and are therefore rejected in the same manner as this claim, which is set forth above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 48-49 and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 47.

(A) As per claims 48-49, 51-54 and 58, these claims are rejected in the same manner as set forth in the Board decision mailed on May 25, 2011. The amendments filed to these claims on July 21, 2011 appear to make only minor grammatical changes to the claims and are not adding any new limitations and/or modifying the scope of the claims.

5. Claims 59-62 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto.

(A) Claim 59 is substantially similar to Claim 47 and is therefore rejected on the same basis as Claim 47, which is set forth above. Claim 59 does include the following feature which is not expressively taught by Fujimoto. Specifically, Fujimoto does not teach that the data relating to the physiological condition of the individual is blood glucose measurement data, however it is well known in the art to measure blood glucose data using a measuring device.

The Office therefore rejects this claim in the same manner as set forth in the Board decision mailed on May 25, 2011.

(B) As per claims 60-62 and 106, these claims are rejected in the same manner as set forth in the Board decision mailed on May 25, 2011. The amendments filed to these claims on July 21, 2011 appear to make only minor grammatical changes to the claims and are not adding any new limitations and/or modifying the scope of the claims.

6. Claims 78-83, 85-90, 92-97 and 99-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 77, 84, 91 and 98, above, respectively.

(A) As per claims 78-83, 85-90, 92-97 and 99-104 these claims are substantially similar to Claims 60-62 and are therefore rejected in the same manner as these claims, which is set forth above.

#### **(10) Response to Argument**

Applicant's arguments will be addressed in sequential order as they were presented in the Appeal Brief filed on March 19, 2012.

(1) With regard to the independent claims, the applicant argues that the Fujimoto references does not disclose or suggest (i) a central processing unit, (ii) a remote processing apparatus remotely located from and in signal communication with the central processing unit



via the communication network and (iii) a computer remotely located from and in signal communication with the central processing unit via the communication network.

To respond to this argument, the Office would like to point out that Fujimoto does in fact clearly disclose these features (Figure 1 and Col. 2, Ln. 34-55).

(2) With regard to the independent claims, the applicant argues that Fujimoto does not generate a user-specific first program by modifying a template program based on input data received via a telecommunication line.

To respond to this argument, the Office would like to point out that Fujimoto does in fact clearly teach this feature (Col. 4, Ln. 14-67).

(3) With regard to the independent claims, the applicant argues that Fujimoto does not teach collecting measurement data according to a collect command and, also, transmitting this data (as per a transmit command) back to a host computer.

To respond to this argument, the Office would like to point out that Fujimoto does in fact clearly teach this feature (Fujimoto: Col. 4, Ln. 34-50; Col. 4, Ln. 60-69 and Col. 8, Ln. 8-40).

#### **(11) Related Proceeding(s) Appendix**

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

**(12) Conclusion**

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Vivek D Koppikar/

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